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Superior Court Of California
County Of Los Angeles

FEB 06 2019

Sherri R. Carter, Executive Officer/Clerk of Court
By _____, Deputy
Charletta Robinson

SUPERIOR COURT OF THE STATE OF CALIFORNIA
COUNTY OF LOS ANGELES

LOS ANGELES POLICE PROTECTIVE LEAGUE
Petitioners,
v.

CITY OF LOS ANGELES, a municipal corporation

Respondents

ACLU OF SOUTHERN CALIFORNIA and VALERIE RIVERA,

Proposed Intervenors

Case No. 18ST CPO 3495

COMPLAINT IN INTERVENTION

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By leave of Court, the ACLU OF SOUTHERN CALIFORNIA ("ACLU" or "ACLU of Southern California") and VALERIE RIVERA (Ms. Rivera) (collectively "Intervenors") hereby intervene in this Action in opposing Petitioners' claims. Intervenors allege as follows:

PARTIES

1. For purposes of this Complaint in Intervention, petitioner LOS ANGELES POLICE PROTECTIVE LEAGUE ("LAPPL") is an employee organization as defined by Government Code Section 3500 et seq. that represents police officers, police detectives, sergeants and lieutenants employed by the City of Los Angeles.

2. For purposes of this Complaint in Intervention, respondent THE CITY OF LOS ANGELES ("City") is a California municipal corporation who has acted as relevant to this complaint through various divisions and agencies, including the Los Angeles Police Department ("LAPD").

3. Intervenor the AMERICAN CIVIL LIBERTIES UNION OF SOUTHERN CALIFORNIA ("ACLU" or "ACLU of Southern California") is a non-profit corporation that defends the fundamental rights outlined in the United States Constitution and the Bill of Rights, which sought disclosure by the City of public records in its possession related investigations and discipline of police officers.

4. Intervenor VALERIE RIVERA ("Ms. Rivera") is a California resident who sought disclosure by the City of public records regarding her son's death pursuant to the California Public Records Act ("CPRA").

FACTS

5. The CPRA requires a state or local agency to make public records in its possession available for inspection, unless a legal provision renders them exempt from disclosure. Govt. Code § 6253(a). Under the Act's exemptions, the personnel records are available to the public unless disclosure "would constitute an unwarranted invasion of personal privacy." Gov't Code § 6254(c). Courts have interpreted this as requiring a balancing between a government employee's personal privacy interest in the records at issue and the public interest at stake: for

most government employees, findings of misconduct are available to the public, as are complaints that have not been found true but "reveal sufficient indicia of reliability to support a reasonable conclusion that the complaint was well founded." *See Marken v. Santa Monica-Malibu Unified Sch. Dist.*, 202 Cal. App. 4th 1250, 1273 (2012) (quoting *Bakersfield City Sch. Dist. v. Super. Ct.*, 118 Cal. App. 4th 1041, 1047 (2004)); *City of Hemet v. Super. Ct.*, 37 Cal. App. 4th 1411, 1428 (1995).

6. Peace officers are the sole exception to this balancing approach, as public access to their personnel records is governed by Penal Code §§ 832.7 and 832.8. Prior to enactment of S.B. 1421, these provisions made all peace officer personnel records – defined as all records related to the "advancement, appraisal and discipline" of peace officers – confidential, without regard to public interest in the records or any balancing inquiry. Penal Code § 832.7, 832.8. This included public records regarding investigations into police shootings and other serious uses of force, or allegations of serious misconduct – even when the agency had concluded that the officer had engaged in misconduct. *City of Hemet*, 37 Cal. App. 4th at 1431.

7. In 2018, the California Legislature enacted S.B. 1421, which modifies Penal Code § 832.7 in order to makes public three categories of records related to peace officers that are specific to the powers of police officers or their potential for abuse. These include records related to (1) use of deadly force; (2) a sustained finding of sexual assault by a peace officer; and (3) a sustained finding of dishonesty tied to police officers' unique powers in investigating and prosecuting crimes, such as perjury or the fabrication of evidence, or police misconduct. *See* Penal Code § 832.7(b)(1) (effective Jan. 1, 2019). Pursuant to S.B. 1421, a member of the public who files a CPRA request for such public documents is entitled to disclosure.

8. On December 26, 2018, just days before S.B. 1421 went into effect, LAPPL filed its petition arguing that records regarding misconduct that occurred prior to January 1, 2019 could not be disclosed under S.B. 1421. On December 31, 2018, this court granted the LAPPL's application for a temporary stay of the law.

9. After the law was enacted, Intervenors both filed Public Records Act requests pursuant to S.B. 1421 for records in the possession of the City. Those requests seek records that existed *prior to* January 1, 2019.

INTERVENORS' INTEREST IN THE LITIGATION

10. Intervenors have an interest relating to the transaction that cannot be adequately represented by the existing parties under California Code of Civil Procedure § 387. Both the ACLU and Ms. Rivera submitted California Public Records Act ("CPRA") requests to the LAPD pursuant to S.B. 1421 for records that cannot be disclosed if this Court comes to an adverse ruling. Accordingly, Intervenors have an interest in the litigation as CPRA records requestors. Furthermore, both the ACLU and Ms. Rivera are proponents of S.B. 1421, having worked with legislators to draft and revise the bill and lobbied for its passage, enactment, and implementation. Thus, Intervenors also have an interest in this litigation as proponents.

Intervenor ACLU SoCal

11. As part of its mission, ACLU of Southern California and other California affiliates of the ACLU have been involved in a number of cases and legislative campaigns involving both the open, transparent and accountable operation of police departments and substantive issues around policing.

12. The California ACLU affiliates have filed amicus briefs and/or participated in oral arguments in numerous cases addressing the issue of public access to police records, including *Long Beach Police Officers Ass'n v. City of Long Beach*, 59 Cal. 4th 59 (2014) (hereinafter "Long Beach"); *Commission on Peace Officer Standards and Training (POST) v. Superior Court*, 42 Cal.4th 278 (2007) (hereinafter "Comm'n on POST"); *Copley Press, Inc. v. Superior Court*, 39 Cal.4th 1272 (2006) (hereinafter "Copley Press"); and *Berkeley Police Ass'n v. City of Berkeley*, 167 Cal. App. 4th 385 (2008), and represented parties in numerous cases involving operation of police departments or access to state and federal law enforcement records, see, e.g., *People v. Stanistreet*, 29 Cal.4th 497 (2002) (raising First Amendment challenge to statute imposing criminal penalties for false complaints against police officers); *Islamic Shura Council*

of So. Cal. v. FBI, 635 F.3d 1160 (9th Cir. 2011) (representing plaintiffs in FOIA request regarding FBI investigations of Los Angeles and Orange County Muslim communities); *Chaker v. Crogan*, 428 F.3d 1215 (9th Cir. 2005) (habeas challenge to statute at issue in *Stanistreet*); *Council on American-Islamic Relations, California v. FBI*, 749 F. Supp. 2d 1104 (S.D. Cal. 2010) (representing plaintiffs in FOIA litigation regarding FBI surveillance of Muslim community in San Diego); *ACLU of Northern California v. City of Fresno*, Fresno Sup. Ct. No. 09CECG01765 (filed May 19, 2009). *Long Beach Police Officers Ass'n*, *Comm'n on POST*, and *Copley Press* each directly addressed the scope of confidentiality conferred on peace officer records under Penal Code §§ 832.7 and 832.8.

13. The ACLU of Southern California, acting with the two other ACLU affiliates in California as the ACLU of California, has also sponsored legislation to establish greater public access to records of investigations into and discipline related to serious uses of force and misconduct by police. The ACLU Southern California, through the ACLU of California, was one of the cosponsors of Senate Bill 1421, which enacted the provisions at issue in this litigation, and spent significant resources advocating for passage of that bill, spending staff time and financial resources in mobilizing members of the public, lobbying, supporting the policy behind the legislation, and engaging in communications with members, media and the general public. ACLU of California also sponsored two previous pieces of legislation aimed at opening records of police investigations and discipline to public access, Senate Bill 1286 (Leno) in 2016, and Senate Bill 1019 (Romero) in 2007.

14. Over decades, the ACLU of Southern California has also been involved in numerous cases and campaigns involving police use of force, discipline, and accountability. Through ACLU of California, ACLU of Southern California was a cosponsor of Assembly Bill 931 (Weber) in 2018, which would have changed the standard under California law for when officers are authorized to use deadly force. In fall 2017, ACLU of Southern California released two reports on use of force by police, one in the Anaheim Police Department and one in Kern County by the Kern County Sheriff's Office and Bakersfield Police Department.

15. ACLU of Southern California has consistently engaged in advocacy at LAPD in particular. ACLU of Southern California was one of the primary opponents of a recent ballot measure, Charter Measure C (2017), sponsored by Petitioner Police Protective League, that altered the process for disciplinary appeals at LAPD. ACLU of Southern California has engaged in advocacy around LAPD's policies around racial profiling, police body cameras, and use of force. ACLU of Southern California has engaged in public advocacy around ACLU of Southern California represented community intervenors in a U.S. D.O.J. consent decree over LAPD from 2004 to 2011, aimed at address alleged pattern and practice of civil rights violations, in *United States v. City of Los Angeles*, Case No. CV 00-11769 (C.D. Cal.) (representing intervenors in a federal consent decree over the Los Angeles Police Department brought by the U.S. Department of Justice). And ACLU of Southern California has on several occasions litigated against the City of Los Angeles for increased access to police records, including recently in *Am. Civil Liberties Union Found. v. Superior Court*, 3 Cal. 5th 1032 (2017) (records of automatic license plate readers), and Winston vs. Los Angeles Police Dep't, No. BS 169474 (alleging systemic failures to respond timely to public records requests).

16. In light of the ACLU's interests in transparency and police accountability, on January 1, 2019, the ACLU of Southern California submitted a request for public records pursuant to S.B. 1421 and the CPRA to the LAPD via its online portal, and also mailed a substantially identical copy on letterhead to LAPD. See Exhibit A (copy on letterhead). The request seeks a selection of documents on fatal uses of force by LAPD officers and sustained cases of dishonesty going back twenty years, as well documents within a narrower time frame for other categories of records available under S.B. 1421. As set forth in the request, ACLU coordinated the request with a number of other community and civil rights organizations, and intends to "share all records obtained, with this group of organizations, and further commit to making those records available to the public by posting on the Internet and other means, to help facilitate access to the records [LAPD] produces." *Id.* at 1.

17. On January 10, 2019, the City responded stating that the LAPD is currently prohibited by a temporary order issued by the Los Angeles Superior Court from disclosing any records responsive to the request. See Exhibit B.

Intervenor Valerie Rivera

18. Ms. Rivera is the mother of Eric Rivera, who was killed by LAPD officers in 2017. Eric was holding a plastic water squirt gun at the time that LAPD officers spotted him as they were driving down the street. LAPD officers approached him and shot him in the head, stomach, legs and back. Officers subsequently ran him over with their patrol car that they failed to put in park when they exited the vehicle before shooting him. An officer jumped back into the car after realizing that it was still in drive and stepped on the gas instead of the brake, running over Eric and pinning him under the car. Eric died at the scene.

19. The Los Angeles Bureau of Police Commissioners ("Police Commission"), the body that oversees the LAPD, found his killing to be "within policy," which means that the officers who killed Ms. Rivera's son acted within LAPD's rules, and that they will not be disciplined or face any other consequence, and that there will be no further examination of or change to LAPD policies because of his son's death.

20. Spurred to action by her son's death, Ms. Rivera became a member of Black Lives Matter-Los Angeles ("BLM-LA") in order to advocate for officers to be held accountable when they take a life, and to change LAPD's policies on the use of force.

21. California Chapters of Black Lives Matter were co-sponsors of S.B. 1421. The organization, alongside other co-sponsors, worked with legislators to draft the bill, negotiate revisions, educate the public about the current law and the significance of S.B. 1421, and lobby legislators to vote for it. Ms. Rivera was active in this work. This is the first piece of legislation that any BLM California chapter had co-sponsored, and it did so because public access to records of police misconduct and investigations into police uses of force is the first step towards achieving justice for their victims and making systemic changes that will prevent future harm. Gaining access to public records regarding serious police misconduct allows BLM-LA to better

understand police use of force and departments' evaluation of those uses of force. In other jurisdictions where records were made public other BLM chapters have been able to successfully advocate for officers to be held responsible for killing civilians, such as in the Chicago case that resulted in the successful criminal prosecution of Laquan McDonald. BLM-LA hopes that disclosure of records of LAPD officers and investigations regarding their uses of force will allow us to advocate for greater accountability for police officers and to lobby district attorneys to prosecute officers who kill civilians.

22. Accessing records regarding LAPD's killing of Ms. Rivera's son will allow her to better advocate for change within the LAPD—both by demanding that the department enforce their own policies and hold officers accountable, and by pushing for changes in LAPD policy to recognize that taking a life in such an appalling manner as they did to my son should not be permissible. It will also allow Ms. Rivera to advocate for the Los Angeles District Attorney to hold officers accountable by showing that their conduct violated the law, regardless of whether the Police Commission determined their acts violated department policy.

23. Because of this interest, on January 7, 2019, Ms. Rivera filed a PRA seeking records related to the investigation of her son's death with the LAPD via their online portal. See Exhibit C. On January 16, 2019, the City responded acknowledging the request and requesting more time to respond. Id.

24. Intervenors' ability to protect their interests would be impeded and impaired by disposition of this action in their absence. As records requestors, Intervenors could file a lawsuit seeking disclosure of the requested records and enforcement of records requestors' right to access to public records under the CPRA; however, any disposition in the present action would necessarily determine the disposition of such a lawsuit and could limit Intervenors' right of access to public records.

25. Respondent the City and other existing parties do not adequately represent the interests of the Intervenors. The City's sole interest is in enforcement of S.B. 1421 and the CPRA, not in interpretation of those statutes to protect the public's right to know. In fact, the

City's interest is likely contrary to Intervenors' interest because the City would have to expend significant resources to comply with S.B. 1421 and the CPRA. The City itself noted that implementation of S.B. 1421 would be "exceptionally burdensome" in letters to State Senator Nancy Skinner and to the LAPPL. LAPPL Verified Petition for Writ of Mandate ("Petition"), Exhibit B (December 8, 2018 Letter from Michel R. Moore, LAPD Chief of Police, to State Senator Nancy Skinner) ("Moore Letter"); Petition, Exhibit C (December 26, 2018 Letter from Arif Alikhan, Director of the LAPD Office of Constitutional Policing and Policy, to Craig Lally, President of LAPPL) ("Alikhan Letter"). The City noted, "The Department maintains use of force investigative files and personnel records going back decades and the retroactive application of SB 1421 will require LAPD to hire additional personnel, acquire costly computer equipment and software, transfer funding for training and technical assistance, and reassign front-line personnel to perform the administrative tasks necessary for compliance." Petition, Exhibit C (Alikhan Letter) at 2.

26. This application for intervention is timely, as Respondent the City has not yet filed an answer to Petitioner's Petition for Writ of Mandate, this Court has issued no rulings on the merits in the action, and Intervenors filed its Application for Leave to Intervene less than two weeks after learning about the action on January 2, 2019. Moreover, Proposed Intervenors need to be able to intervene in time to file an opposition before Tuesday, January 22, 2019.

Mandatory intervention – Code Civ. Proc. § 387(b)

27. As shown by the facts alleged above, Intervenors have a right to intervene in this action pursuant to Code Civ. Proc. §387(b). This is because Intervenors claim an interest in the subject of this action based on the Public Records Act requests they have submitted to the City, which seek information about records now subject to disclosure based on SB 1421, including records of the investigation into the killing of Valerie Rivera's son. Adjudication of petitioner's claims –which seek to preclude disclosure of these records—will impair or impede Intervenors' ability to protect its interest in obtaining disclosure of information responsive to Public Records Act requests.

Permissive intervention – Code Civ. Proc. §387(a)

28. As shown by the facts alleged above, Intervenors have a right to intervene in this action pursuant to Code Civ. Proc. §387(a). Intervenors were instrumental in the enactment of S.B. 1421. Moreover, Intervenors have a direct and longstanding interest in the subject matter of this litigation, i.e. promoting open government in general, and shedding light on police officer misconduct in particular. These issues will be directly and immediately affected by the outcome of this litigation.

29. Adjudication of Intervenors' interests will not delay or unduly expand the scope of the issues beyond those raised by Petitioner. The intervention will not result in any delay, prejudice or inconvenience to any of the existing parties. Because Intervenors represent the interest of members of the public, Intervenors' interest is more compelling than that of Respondent, the City, which only seeks to enforce the CPRA and S.B. 1421.

GROUNDS UPON WHICH INTERVENORS OPPOSE PLAINTIFFS' CLAIMS

30. Intervenors hereby incorporate paragraphs 1 through 17 as though fully set forth herein.

31. Intervenors oppose Petitioners' Verified Petition for Writ of Mandate; Alternative Writ of Mandate, and Request for Stay Order ("LAPPL Writ") in its entirety.

32. Firstly, the LAPPL incorrectly characterizes the application of SB 1421 to require production of records relating to officer misconduct that were created, or related to conduct that occurred, prior to January 1, 2019 as "retroactive." But S.B. 1421, like any Public Records Act scheme, requires only application to documents in agencies' possession after the effective date of the statute, regardless when those documents were created or when the conduct the documents concern occurred. That is not a retroactive application of the statute, but an ordinary prospective application.

33. Secondly, peace officers have no vested interest in the confidentiality of their records of deadly force or misconduct.

34. Lastly, even if the court determines that compelling agencies to produce records that were created, or relate to conduct that occurred, before January 1, 2019 would be a "retroactive" application of the law, the law should be applied retroactively. The California Legislature clearly intended for S.B. 1421 to apply to records created prior to January 1, 2019 and such application serves important state interests that override any interest that peace officers may have had in the past confidentiality of their records of deadly force and serious misconduct.

35. The public has a right to know about serious police misconduct. In enacting S.B. 1421, the Legislature recognized the public strong public interest in access to these police misconduct records as part of its right to know:

> The public has a right to know all about serious police misconduct, as well as about officer-involved shootings and other serious uses of force. Concealing crucial public safety matters such as officer violations of civilians' rights, or inquiries into deadly use of force incidents, undercuts the public's faith in the legitimacy of law enforcement, makes it harder for tens of thousands of hardworking peace officers to do their jobs, and endangers public safety.

S.B. 1421, Section 1(b). The relief sought by Petitioners LAPPL would thwart the legislature's intent and harm this public interest by limiting the records the public could request and therefore limiting the public's right to know about serious police misconduct.

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REQUEST FOR RELIEF

WHEREFORE, Intervenors pray as follows:

1. That Petitioner's petition request for relief be denied in full, including but not limited to their request for a writ of mandate and injunctive relief, and that this court dissolve the stay currently in place;
2. That the Court issue an order permanently enjoining Respondent from denying Public Records Act requests on the basis that S.B. 1421 does not apply to records created, or that concern conduct that occurred, prior to Jan. 1, 2019;
3. That the Court declare that S.B. 1421 applies to all existing and future public records, regardless of when they were created, or when the conduct described in them occurred; and
4. For attorneys' fees and costs, and for other such relief as the Court deems just and proper.

Dated: January 23, 2019

Respectfully submitted

AMERICAN CIVIL LIBERTIES UNION OF SOUTHERN CALIFORNIA

By: s/ Rekha Arulanantham
Rekha Arulanantham

Attorneys for Intervenors
AMERICAN CIVIL LIBERTIES UNION OF SOUTHERN CALIFORNIA
VALERIE RIVERA

Exhibit A

ACLU
California

January 1, 2019

Los Angeles Police Department
100 West 1st Street Room
Los Angeles, CA 90012

Re: Request for Public Records on Police Use of Force Investigations, Sustained Findings of Police Dishonesty and Sexual Assault

To Whom It May Concern:

I write to respectfully request records related to the investigation and discipline of peace officers employed by the Los Angeles Police Department (the "Department) under the California Public Records Act, Gov't Code §§ 6250 et seq., California Penal Code §§832.7-832.8, and Art. I, § 3(b) of the California Constitution, as set forth below.

Last fall, the California legislature passed, and Governor Brown enacted, SB 1421 (Skinner), which amends California Penal Code section 832.7 to provide the public a right of access to records related to investigations into investigations and discipline of peace officers for shootings and serious uses of force, as well as sustained findings of dishonesty related to the investigation, reporting, and prosecution of a crime or police misconduct. We now respectfully request the records newly available under SB 1421. We make this request as the American Civil Liberties Union of Southern California, as requestor, on behalf of the ACLU of California (including the ACLU of Northern California, ACLU of Southern California, and ACLU of San Diego and Imperial Counties) as well as a wide array of civil rights, government transparency, and criminal defense groups, including the Youth Justice Coalition, Justice Teams Network, Anti Police-Terror Project, California Faculty Association, PolicyLink, STOP Coalition, California Public Defender Association, and National Association of Criminal Defense Lawyers.

We have coordinated this request, and will share all records obtained, with this group of organizations, and further commit to making those records available to the public by posting on the Internet and other means, to help facilitate access to the records you produce.

I. Requests for Records

We understand that this change in the law may result in a significant number of responsive documents, and that you may have received a number of requests for similar documents from other requestors. We have endeavored to tailor our request to a limited selection of the most important documents and most relevant timeframe for incidents.

As set forth below, for purposes Requests 1 through 7, we do not seek all records relating to the underlying incident, but only a limited set of "Decisional Documents" relating to the

administrative investigation of the incident. For purposes of these requests, "Decisional Documents" means all documents[1] reflecting or setting forth:

- The Department's decision, prior to any administrative appeal, that an officer's conduct did (or did not) violate the law or agency policy, and any reasons for that decision;
- The final investigative report (prior to any administrative appeal) of the Department, or any division of the Department, or any document setting out factual findings of, or recommended factual findings for, the person or body charged with deciding whether the officer's conduct was within policy and/or warranted discipline or other corrective action;
- The punishment imposed or corrective action taken as the result of an administrative investigation, including letters of intent to impose discipline or other documents reflecting discipline imposed, changes in rank or assignment, training required, or changes to or examinations of Department policy, training or practice;
- A decision on appeal from the Department's factual finding, or the discipline or corrective action imposed, including review by a superior or arbitration, including any statement of reasoning by an appeal body and any revised discipline or corrective action imposed, or any documents reflecting modifications of discipline due to the *Skelly* or grievance process,
- Any agreement to resolve an administrative investigation, including any agreement (or lack of agreement) as to the facts of what happened in the incident, or discipline or corrective action to be imposed;
- The final investigative report, factual findings, legal conclusions, or recommendations on discipline, policy, procedures or training, by the district attorney, independent civilian oversight body, or outside law enforcement agency brought on to conduct an investigation into an incident;
- The final imposition of discipline or implementation of corrective action.

For purposes of this request, records include, but are not limited to all investigative reports; photographic, audio, and video evidence; transcripts or recordings of interviews; autopsy reports; all materials compiled and presented for review to the district attorney or to any person or body charged with determining whether to file criminal charges against an officer in connection with an incident, or whether the officer's action was consistent with law and agency policy for purposes of discipline or administrative action, or what discipline to impose or corrective action to take; documents setting forth findings or recommended findings; and copies of disciplinary records relating to the incident, including any letters of intent to impose discipline, any documents reflecting modifications of discipline due to the Skelly or grievance process, and letters indicating final imposition of discipline or other documentation reflecting implementation of corrective action. Cal. Penal Code §832.7(b)(2).

[1] The term "records" as used in this request is defined as "any writing containing information relating to the conduct of the public's business prepared, owned, used, or retained by any state or local agency regardless of physical form or characteristics." Cal. Govt. Code § 6252, subsection (e). "Writing" is defined as "any handwriting, typewriting, printing, photostating, photographing, photocopying, transmitting by electronic mail or facsimile, and every other means of recording upon any tangible thing any form of communication or representation, including letters, words, pictures, sounds, or symbols, or combinations thereof, and any record thereby created, regardless of the manner in which the record has been stored." Cal. Govt. Code § 6252 (g).

For purposes of these requests, "Decisional Documents" does not include underlying evidence, expert reports, witness statements, audio or video, unless incorporated by or included in the documents described above.

We also recognize that at some departments, older records may be stored in different recordkeeping systems that may require more time an effort to retrieve. If this is the case with your agency, we are happy to discuss particular obstacles or concerns and a process for retrieving records as efficiently as possible.

Records Request No. 1: All DECISIONAL DOCUMENTS related to the administrative investigation of any use of force by a peace officer employed by the Department[2] that resulted in death, from January 1, 1999 to the present. *See* Penal Code § 832.7(b)(1)(A)(ii).

Records Request No. 2: All DECISIONAL DOCUMENTS relating to any incident in which a peace officer employed by the Department was found to have committed an act of dishonesty directly relating to the reporting, investigation, or prosecution of a crime, or directly relating to the reporting of, or investigation of misconduct by, another peace officer or custodial officer, including, but not limited to, any sustained finding of perjury, false statements, filing false reports, destruction, falsifying, or concealing of evidence, at any time from Jan. 1. 1999, to the present. See Penal Code § 832.7(b)(1)(C). Such incidents may also include receipt or solicitation of bribes, loans, favors, or gifts in relation to an investigation; misappropriation of property in an investigation, obstructing an investigation, or influencing a witness.

Records Request No. 3: For any officer about whom a sustained finding of dishonesty is disclosed in response to Records Request No. 2, above, all DECISIONAL DOCUMENTS relating to any sustained finding of dishonesty relating to the reporting, investigation, or prosecution of a crime or misconduct by another peace officer, regardless of date.

Records Request No. 4: All DECISIONAL DOCUMENTS related to any administrative investigation into the discharge of a firearm at a person by a peace officer employed by the Department, which did not result in death, from January 1, 2014 to the present. *See* Penal Code § 832.7(b)(1)(A)(i).

Records Request No. 5: All DECISIONAL DOCUMENTS related to any administrative investigation into a use of force by a peace officer employed by the Department against a person that resulted great bodily injury, from January 1, 2009 to the present. *See* Penal Code § 832.7(b)(1)(A)(ii).

Records Request No. 6: For any officer who used force resulting in death at any time since January 1, 1999, all DECISIONAL DOCUMENTS related to any administrative investigation into the discharge of a firearm at a person by that officer that did not result in death, or a use of

[2] A peace officer is "employed by the Department" for purposes of these requests if that officer has been employed by the Department at any time. The modifying phrase "employed by the Department" does ***not*** limit the requests only to officers currently employed by the Department, nor does it exclude documents within the position of the Department that concern the incidents that occurred while the peace officer was employed by another agency.

force by that officer against a person that resulted great bodily injury but not death, regardless of date.

Records Request No. 7: All DECISIONAL DOCUMENTS relating to any incident in which a sustained finding was made by any law enforcement agency or oversight agency that a peace officer or custodial officer employed by the Department engaged in sexual assault involving a member of the public, from January 1, 2009 to the present. *See* Penal Code § 832.7(b)(1)(B). For purposes of this request, "sexual assault" refers to the commission or attempted initiation of a sexual act with a member of the public by means of force, threat coercion, extortion, offer of leniency or other official favor, or under the color of authority, including unwanted or gratuitous sexual contact such as touching or groping. *See id.* § 832.7(b)(1)(B)(ii).

Records Request No. 8: For any officer about whom a sustained finding of sexual assault is disclosed in response to Records Request No. 7, above, all DECISIONAL DOCUMENTS relating to any sustained finding of sexual assault, regardless of date.

II. Request for Preservation, or in the Alternative, Request for Documents

While we have asked for a limited selection of documents that are newly available pursuant to S.B. 1421, review of those documents will very likely reveal some incidents in which requestors or other members of the public would like additional detail, such as records of investigation, audio, video, expert reports and other documents excluded from the present request. We therefore request that you provide assurances that you will preserve all such documents, at least for a reasonable time after complying with the present set of document requests, to allow targeted requests for additional information on specific cases.

III. Prioritization of Requests

We understand that this change in the law may result in a significant number of responsive documents, and that you may have received a number of requests for similar documents from other requestors. To help make sure your response serves the public interest in disclosure of these important records as efficiently as possible, we ask that you prioritize in the following order:

First, ***please prioritize requests from other requestors who are family members of those killed by police seeking information on how their loved ones died***. We recognize that the change in law in many instances may allow these family members access to this information for the first time, and for the first time provide answers about their losses, and urge you prioritize these disclosures.

Second, for our requests, prioritize in the order of requests, 1 through 8.

Third, if for any reason some categories of documents responsive to a request are more readily disclosable and others more difficult — for example, if older records are in archival storage or stored in a different and harder-to-use system, or documents responsive to one request are not as easily categorized for disclosure and would require more time-intensive searching than another — please contact us to discuss the obstacles to prompt disclosure so that we can work out a

timeline, process, or refined selection criteria for documents that are more difficult to find or produce.

Please respond to this request in ten days, either by providing the requested information or providing a written response setting forth the specific legal authority on which you rely in failing to disclose each requested record, or by specifying a date in the near future to respond to the request. See Cal. Gov't Code § 6255. Pursuant to section 6253, please disclose all reasonably segregable non-exempt information from any portions of records you claim are exempt from disclosure.

If any records requested above are available in electronic format, please provide them in an electronic format, as provided in Govt. Code § 6253.9. To assist with the prompt release of responsive material, we ask that you make records available to us as you locate them, rather than waiting until all responsive records have been collected and copied.

If you would like to discuss these requests, please feel free to call Hermelinda Calderon or Casey Kasher at (213) 977-5265. Otherwise, please send any correspondence or documents in electronic format via email to prarequest@aclusocal.org, or correspondence or documents on CD-ROM or USB drive to:

SB 1421 Records
ATTN: Casey Kasher
ACLU of Southern California
1313 W. 8th Street
Los Angeles, CA 90017

Because this request is made on behalf of a number of nonprofit public interest organizations, with the intent to make this material easily accessible to the public as promptly as possible, we request that you waive any fees. *North Cty. Parents Ass'n v. Dep't of Ed.*, 23 Cal. App. 4th 144, 148 (1994); Cal. Gov. Code §6253(e). However, should you be unable to do so, ACLU SoCal will reimburse your agency for the "direct costs" of copying these records plus postage. If you anticipate these costs to exceed $50.00, please notify us prior to making the copies.

Thank you in advance for providing the records we have requested. Please do not hesitate to contact us with any questions regarding this letter.

Best,

Peter Bibring
Director of Police Practices
ACLU of Southern California

Exhibit B

Peter Bibring

From: publicrecords@lacity.org <support@nextrequest.com>
Sent: Thursday, January 10, 2019 7:03 PM
To: Peter Bibring
Subject: [External Message Added] City of Los Angeles public records request #18-3679

-- Attach a non-image file and/or reply ABOVE THIS LINE with a message, and it will be sent to staff on this request. --

City of Los Angeles Public Records

Hi there

A message was sent to you regarding record request #18-3679:

Dear Peter Bibring:

The Los Angeles Police Department ("LAPD" or "Department") has received your request under the California Public Records Act (Cal. Govt. Code section 6250, *et seq.*, or the "CPRA") seeking peace officer personnel records and/or Department records relating to the types of incidents described in Penal Code Section 832.7, subdivision (b)(1), subsections (A), (B) & (C).

The Department is cognizant of its responsibilities under the CPRA. It recognizes the statutory scheme was enacted to maximize citizen access to the workings of government. The CPRA does not mandate disclosure of all documents within the government's possession. Rather, by specific exemption and reference to other statutes, the CPRA recognizes that there are boundaries where the public's right to access must be balanced against such weighty considerations as the right of privacy, a right of constitutional dimension under California Constitution, Article 1, Section 1. The law also allows for nondisclosure of records that are

otherwise exempt under either express provisions of the Act or pursuant to applicable federal or state law, per California Government Code Sections 6254(a); 6254(b); 6254(c); 6254(f); 6254(k); and 6255.

The Department also recognizes that Penal Code Section 832.7 and Government Code Section 6254(f) – which generally make all peace officer personnel records and police investigatory records confidential and exempt from disclosure – were amended effective January 1, 2019, by Senate Bill 1421. The amendments created exceptions from those general confidentiality requirements for the following four categories of officer personnel and investigatory records: (A) records relating to the report, investigation, or findings of (i) an incident regarding an officer-involved shooting; or (ii) an incident involving the use of force by an officer resulting in death or great bodily injury; (B) records relating to an incident involving a sustained finding of sexual assault by an officer involving a member of the public; and (C) records relating to an incident involving a sustained finding of dishonesty by an officer directly related to the reporting, investigation, or prosecution of a crime or an investigation of misconduct by another officer. Pen. Code § 832.7(b)(1)(A)-(C).

To the extent your request seeks records relating to such incidents occurring before January 1, 2019, the Los Angeles Superior Court has issued a temporary order directing the Department to refrain from enforcing or applying the SB 1421 amendments to Penal Code Section 832.7 in any manner which would result in the disclosure or production of records regarding incidents or reflecting conduct occurring prior to January 1, 2019. The Superior Court's temporary order staying the Department's enforcement of SB 1421, which was entered on December 31, 2018 in *Los Angeles Police Protective League v. City of Los Angeles*, Case No. 18STCP03495, is in place until the court orders otherwise. Accordingly, the Department is currently prohibited from

disclosing or providing any records responsive to this portion of your request.

Respectfully,

LAPD CPRA Unit

View Request 18-3679

http://lacity.nextrequest.com/requests/18-3679

POWERED BY NEXTREQUEST

The All in One Records Requests Platform

Questions about your request? Reply to this email or sign in to contact staff at City of Los Angeles.

Technical support: See our help page

Exhibit C

ro

ENT

Request #19-106

OPEN

17 of 18 filtered by: Keyword search: Martin

As of January 16, 2019, 4:01pm
Request Visibility: Unpublished

Details

January 7, 2019

Los Angeles Police Department
100 West 1st Street Room
Los Angeles, CA 90012
Contact.lapdonline@gmail.com

Via Online Form

RE: Request for Public Records Regarding June 6, 2017 shooting of Eric Rivera

To Whom It May Concern:

I request the release of records under the California Public Records Act, Gov't Code §§ 6250 *et seq.*, California Penal Code §§832.7-832.8, and Art. I, § 3(b) of the California Constitution. I seek copies of all records[1] in your office's possession, regardless of who created them. Please provide all records from the date of the above-mentioned incident until the date that this request was received.

I seek a copy of all records relating to the report, investigation, findings and administrative discipline related to June 6, 2017 shooting of Eric Rivera. Records include all investigative reports; photographic, audio, and video evidence; transcripts or recordings of interviews; autopsy reports; all materials compiled and presented for review to the district attorney or to any person or body charged with determining whether to file criminal charges against an officer in connection with an incident, or whether the officer's action was consistent with law and agency policy for purposes of discipline or administrative action, or what discipline to impose or corrective action to take; documents setting forth findings or recommended findings; and copies of disciplinary records relating to the incident, including any letters of intent to impose discipline, any documents reflecting

modifications of discipline due to the Skelly or grievance process, and letters indicating final imposition of discipline or other documentation reflecting implementation of corrective action.

Please respond to this request in ten days, either by providing the requested information or providing a written response setting forth the specific legal authority on which you rely in failing to disclose each requested record, or by specifying a date in the near future to respond to the request. See Cal. Gov't Code § 6255. Pursuant to section 6253, please disclose all reasonably segregable non-exempt information from any portions of records you claim are exempt from disclosure.

If any records requested above are available in electronic format, please provide them in an electronic format, as provided in Govt. Code § 6253.9. To assist with the prompt release of responsive material, we ask that you make records available to us as you locate them, rather than waiting until all responsive records have been collected and copied.
Please send any documents in electronic format to cdmartinlaw@gmail.com. Otherwise, please mail your response to:

Black Lives Matter
C/O Chris Martin
838 E 6th St.
Los Angeles, CA 90021

Because I am the mother of Eric Rivera and it would be financially burdensome for me to have to pay these costs, and because I deserve to know more information about what happened to my son, I request that you waive any fees. ***North Cty. Parents Ass'n v. Dep't of Ed.***, 23 Cal. App. 4th 144, 148 (1994); Cal. Gov. Code §6253(e). However, should you be unable to do so, I will reimburse your agency for the "direct costs" of copying these records plus postage. If you anticipate these costs to exceed $25.00, please notify me prior to making the copies.

Thank you in advance for providing the records we have requested. Please do not hesitate to contact me with any questions regarding this letter.

Sincerely,

Valerie Rivera

[1] The term "records" as used in this request is defined as "any writing containing information relating to the conduct of the public's business prepared, owned, used, or retained by any state or local agency regardless of physical form or

characteristics." Cal. Govt. Code § 6252, subsection (e). "Writing" is defined as "any handwriting, typewriting, printing, photostating, photographing, photocopying, transmitting by electronic mail or facsimile, and every other means of recording upon any tangible thing any form of communication or representation, including letters, words, pictures, sounds, or symbols, or combinations thereof, and any record thereby created, regardless of the manner in which the record has been stored." Cal. Govt. Code § 6252 (g).

– Read less

Received

January 7, 2019 via web

Departments

Police Department (LAPD)

Requester

Chris Martin
cdmartinlaw@gmail.com
838 E 6th St. , Los Angeles, CA 90021
3233592211
Black Lives Matter

Documents

Public (pending)

(none)

Requester

(none)

Staff

Point of Contact

LAPD Analyst Jackie N3375

Timeline

Due Date Changed Public

01/31/2019 (was 01/17/2019). CIRD requested more time.

January 16, 2019, 3:39pm

External Message Requester + Staff

Dear Requester:

I have reviewed your California Public Records Act request.

Please be advised that, pursuant to California Government Code Section 6253(c), I have found that "unusual circumstances" exist with respect to the request due to the need to search for, collect, and review the requested records from other Department entities which are separate from the office processing the request. Therefore, my staff will require the statutory fourteen days extension of time in which to respond. A determination concerning your request will be made as soon as possible.

If you have any questions regarding this correspondence, simply respond to this email.

Respectfully,

LAPD Discovery Section CPRA Unit

January 16, 2019, 3:39pm by LAPD Analyst Jackie N3375 (Staff)

Department Assignment Public

Police Department (LAPD)

January 7, 2019, 8:38pm

Request Opened Public

Request received via web

January 7, 2019, 8:38pm

PROOF OF SERVICE

I am employed in the County of Los Angeles, State of California. I am over the age of 18 and not a party to the within action. My business address is 1313 West Eighth Street, Los Angeles, California 90017.

On January 23, 2019, I served copies of the foregoing documents:

COMPLAINT IN INTERVENTION

on the interested parties listed below at the following addresses:

Richard A. Levine Rains Lucia Stern St. Phalle & Silver, PC 1428 2nd Street, Suite 200 Santa Monica, CA 90401 rlevine@rlslawyers.com	Attorneys for Petitioner Los Angeles Police Protective League
Soraya Kelly Julie Raffish City of Los Angeles 200 North Main Street, Room 800 Los Angeles, CA 90012 soraya.kelly@lacity.org julie.raffish@lacity	Attorneys for Respondents City of Los Angeles; Michel R. Moore
Tenaya Rodewald James M. Chadwick Cristina Salvato Sheppard, Mullin, Richter & Hampton LLP 379 Lytton Avenue Palo Alto, CA 94301 trodewald@sheppardmullin.com jchadwick@sheppardmullin.com csalvato@sheppardmullin.com	Attorneys for Intervenors First Amendment Coalition; Los Angeles Times Communications LLC; California Newspapers Partnership L.P.; The Center for Investigative Reporting; California News Publishers Association

XX BY EMAIL

I caused the foregoing document(s) to be transmitted to the addressees listed above, and to the best of my knowledge, the transmission was complete and without error in that I did not receive an electronic notification to the contrary.

XX BY U.S. MAIL

I caused the foregoing document to be transmitted to the addressees listed above by placing a true copy, enclosed in a sealed envelope with appropriate postage, for collection and mailing following our ordinary business practices. I am readily familiar with this business's practice for collecting and processing correspondence for mailing. On the same day that the correspondence is placed for collection and mailing, it is deposited in the ordinary course of business with the United States Postal Service, in a sealed envelope with postage fully prepaid.

I declare under penalty of perjury under the laws of the State of California that the above is true and correct.

Executed on January 23, 2019, at Los Angeles, California.

Casey Kasher
ACLU Foundation of Southern California